

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7370 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
  2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

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MANILAL FULCHAND MEHTA

Versus

COMPETENT AUTHORITY AND DY.COLLECTOR (ULC),  
RAJKOT & ANR.

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Appearance:

Shri J.R. Nanavaty, Advocate, for the Petitioners  
Shri T.H. Sompura, Asst. Govt. Pleader, for the  
Respondents

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 13/03/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Rajkot (respondent No. 1 herein) on 30th November 1983 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at

Ahmedabad (respondent No. 2 herein) on 10th February 1988 in Appeal No. Rajkot-1300 of 1984 is under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No. 1 declared the holding of the petitioner to be in excess of the ceiling limit by 354.43 square meters.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filed his declaration in the prescribed form under sec. 6(1) of the Act with respect to his holding within the urban agglomeration of Rajkot. It was duly processed by respondent No. 1. After observing the necessary formalities under sec. 8 thereof, by his order passed on 30th November 1983 under sec. 8(4) thereof, respondent No. 1 declared the holding of the petitioner to be in excess of the ceiling limit by 354.43 square meters. Its copy is at Annexure A to this petition. The aggrieved petitioner carried the matter in appeal before respondent No. 2 under sec. 33 of the Act. It came to be registered as Appeal No. Rajkot-1300 of 1984. By the order passed on 10th February 1988 in the aforesaid appeal, respondent No. 2 dismissed it. Its copy is at Annexure B to this petition. The aggrieved petitioner has thereupon approached this Court under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition.

3. It appears that the holding of the petitioner included two constructed properties. One of them was a house property admeasuring 376.26 square meters and the other was a shop admeasuring 33 square meters. These constructed properties were found to be in existence prior to coming into force of the Act. These two properties could not have been included in the petitioner's holding in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 SC 1567. These two properties therefore deserve to be excluded from the holding of the petitioner. That would leave in his holding only one parcel of vacant land admeasuring 1445.17 square meters. The prescribed ceiling limit for the urban agglomeration of Rajkot is 1500 square meters. His holding would therefore be within the ceiling limit for the purpose of the Act.

4. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition cannot be sustained in law.

It has to be quashed and set aside.

5. In the result, this petition is accepted. The order passed by the Competent Authority at Rajkot on 30th November 1983 under sec. 8(4) of the Act at Annexure A to this petition as affirmed in appeal by the appellate order passed by the Urban Land Tribunal at Ahmedabad on 10th February 1988 in Appeal No. Rajkot-1300 of 1984 at Annexure B to this petition is quashed and set aside. It is hereby declared that the petitioner's holding was not in excess of ceiling limit for the purposes of the Act. Rule is accordingly made absolute with no order as to costs.

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